

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR 08-28

WILLIAM F. ELLIS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 17, 2008

APPEAL FROM THE BOONE
COUNTY CIRCUIT COURT,
[NO. CR-2005-338-4]

HONORABLE GORDON WEBB,
JUDGE

AFFIRMED

SARAH J. HEFFLEY, Judge

Pursuant to a search warrant issued on December 8, 2005, police officers searched appellant's home and found several items of contraband, including methamphetamine, marijuana, and drug paraphernalia. Appellant was charged with possession with intent to deliver a controlled substance, simultaneous possession of drugs and firearms, possession of drug paraphernalia, and possession of firearms by certain persons. After both his motion to suppress and supplemental motion to suppress were denied, appellant entered a conditional plea of guilty, reserving his right to appeal the denial of his motion to suppress to this court. We affirm the trial court's denial of appellant's motion to suppress.

The Boone County Sheriff's Department first began investigating appellant's residence after receiving information from Chief Lyle Smith of the Harrison Police Department that appellant was dealing a large amount of methamphetamine out of his residence. After receiving this information, officers began observing appellant's home and noting the coming

and going of cars at his home. On December 8, 2005, officers observed a vehicle belonging to Brian Harmon, a suspected drug dealer, at appellant's home. When Harmon left appellant's home, he was stopped by officers after committing several traffic violations, including running a stop sign. Harmon was arrested for driving while intoxicated and Mirandized. Harmon admitted he had small amounts of both methamphetamine and marijuana in his possession. Later, in a video-taped interview, Harmon told officers that he obtained the methamphetamine from appellant, and he also told officers that he and appellant had "done a line" of methamphetamine while he was at appellant's home. Harmon stated that he had been buying methamphetamine from appellant for approximately the last three months.

Based on this information, the officers obtained a warrant to search appellant's home. At the hearing on appellant's first motion to suppress, held on May 19, 2006, appellant's counsel challenged the probable cause for the issuance of the search warrant as well as the use of the information provided by Harmon. The court found that the primary basis for the probable cause for the search was the information provided by Harmon and that the information in the affidavit for probable cause was an accurate reflection of what Harmon had related to officers. The court concluded that the search warrant was validly issued and denied the motion to suppress.

After this determination, appellant obtained new counsel, who promptly filed a supplemental motion to suppress. The State objected to appellant attempting to relitigate the suppression issue, but the court allowed appellant to present additional arguments not previously addressed by the court. A second suppression hearing was held on September 24, 2007, at which appellant alleged, among other things, material omissions and misstatements

in the affidavit for the search warrant, lack of corroboration, lack of compliance with the “knock and announce” rule, and bad faith in the officers’ traffic stop of Harmon. The court found no merit in any of these arguments and affirmed its previous determination that the affidavit for the search warrant contained adequate probable cause to justify the issuance of the search warrant. Appellant entered a conditional guilty plea and received a combined sentence of twenty-five years’ imprisonment. He now appeals the denial of his motion to suppress to this court.

Our standard of review for a trial court's decision to grant or deny a motion to suppress requires us to make an independent determination based on the totality of the circumstances, to review findings of historical facts for clear error, and to determine whether those facts give rise to reasonable suspicion or probable cause, while giving due weight to inferences drawn by the trial court. *Davis v. State*, 351 Ark. 406, 94 S.W.3d 892 (2003). Under a totality-of-the-circumstances analysis, the task of a magistrate issuing a search warrant is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place, and the duty of a reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed. *Winters v. State*, 89 Ark. App. 146, 201 S.W.3d 4 (2005). We will reverse a trial court’s ruling on a motion to suppress only if the ruling is clearly against the preponderance of the evidence. *Medlock v. State*, 79 Ark. App. 447, 89 S.W.3d 357 (2002). Due deference is given to the trial court's findings in the resolution of evidentiary conflicts and determinations of credibility. *Id.*

On appeal, appellant argues that the affidavit for search warrant contains mere allegations that are either uncorroborated hearsay or conclusory in nature and are insufficient to support a finding of probable cause to search appellant's home. Probable cause is defined as "facts or circumstances within a police officer's knowledge that are sufficient to permit a person of reasonable caution to believe that an offense has been committed by the person suspected." *Medlock, supra*. In assessing the existence of probable cause, our review is liberal rather than strict. *Id.* In addition, our review of the probable cause for the issuance of a warrant is confined to the information contained in the affidavit as that was the only information before the magistrate when he issued the warrant. *George v. State*, 358 Ark. 269, 189 S.W.3d 28 (2004).

Appellant first objects to the lack of corroboration of the information provided by Harrison Police Chief Lyle Smith, who told Boone County officers that appellant was dealing a large amount of methamphetamine out of his residence. However, an affidavit does not have to contain facts establishing the veracity and reliability of non-confidential informants, such as police officers. *Haynes v. State*, 83 Ark. App. 314, 128 S.W.3d 33 (2003).

Appellant also objects to the lack of corroboration of the information provided by Harmon. Reliability of informants is determined by a totality of the circumstances analysis that is based on a three-factored approach the Arkansas Supreme Court adopted in *Frette v. City of Springdale*, 331 Ark. 103, 959 S.W.2d 734 (1998). The factors are: 1) whether the informant was exposed to possible criminal or civil prosecution if the report is false; 2) whether the report is based on the personal observations of the informant; 3) whether the officer's personal observations corroborated the informant's observations. *Id.* at 118, 959 S.W.2d at 741; *see also*

Weatherford v. State, 93 Ark. App 30, 216 S.W.3d 150 (2005). In *Frette*, the court found that because the informant was identifiable and thus subject to prosecution for making a false report, he was found to have greater reliability and satisfied the first factor; the informant's personal observation of the criminal activity gave him a reliable basis of knowledge and satisfied the second factor; and the third factor was satisfied when the informant's information was corroborated by a law enforcement officer. 331 Ark. at 121, 959 S.W.2d at 743. Similarly, in the case at bar, we find that Harmon was identifiable and thus subject to prosecution for making a false report; Harmon personally observed the criminal activity of appellant; and Harmon's observations were corroborated by the information provided by Chief Smith. We hold that this constitutes sufficient indicia of Harmon's reliability.

Next, appellant alleges that including in the affidavit the information that police had been observing appellant's home was misleading because it omits the fact that the police observed no criminal activity taking place. Appellant also objects to information in the affidavit relating to Harmon's suspected drug dealing, the circumstances of his traffic stop, and the fact that he had methamphetamine in his possession. We agree with appellant that none of this information, by itself, constitutes probable cause to search appellant's home, and the affidavit could have provided more detail concerning the observation of appellant's home; however, the information was provided to the magistrate not to establish probable cause but to explain the circumstances leading to Harmon's arrest and subsequent statement to police, which did aid in establishing probable cause to search appellant's home.

We conclude that, based on the information provided in the affidavit for search

warrant, the magistrate had a substantial basis for concluding that probable cause existed, and we affirm the trial court's denial of appellant's motion to suppress.

Affirmed.

PITTMAN, C.J., agrees.

MARSHALL, J., concurs.